

**CITY OF SEATTLE**  
**ORDINANCE \_\_\_\_\_**

COUNCIL BILL 118303

AN ORDINANCE authorizing the Director of the Seattle Department of Transportation to execute an agreement between The City of Seattle and City Investors VII, LLC for a full block reconstruction of 8<sup>th</sup> Avenue North, between Thomas and Harrison Streets.

WHEREAS, by Director's Rule 05-2013, the Director of the Seattle Department of Transportation ("SDOT") adopted the South Lake Union ("SLU") Street Concept Plans that solidified a community vision in the SLU Urban Design Framework that encourages enhanced streetscape features to invigorate the pedestrian environment, increases the multimodal functionality of the right-of-way, and results in an environmentally sensitive street design that includes preserving trees and planting significant landscape; and

WHEREAS, since adoption of the SLU Street Concept Plans, SDOT prioritized and advanced the design of 8<sup>th</sup> Avenue North with an interest to secure funding for implementation; and

WHEREAS, City Investors VII, LLC ("City Investors") applied for Street Improvement Permit (SIP) to install street improvements on the frontage of their development at 300 8<sup>th</sup> Avenue North as required by the Land Use Code, Title 23, and have plans to submit a SIP for development at 333 8<sup>th</sup> Avenue North on the opposite side of the block; and

WHEREAS, in collaboration with SDOT and consistent with the vision illustrated in the SLU Street Concept Plans, City Investors proposed to install additional street improvements beyond the code requirements on 8<sup>th</sup> Avenue North that will help realize the SLU Street Concept Plans in an expeditious and cost-effective way; and

WHEREAS, the purpose of the proposed agreement is to execute an expanded construction agreement between The City of Seattle and City Investors in order to achieve a full block reconstruction on 8<sup>th</sup> Avenue North, between Thomas and Harrison Streets, in accordance with the SLU Street Concept Plans and to support SDOT's efforts to have these concepts implemented through capital projects; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Director of SDOT, or the Director's designee, is authorized to execute on behalf of the City an agreement with City Investors substantially in the form of the agreement attached to this ordinance as Attachment A.

1           Section 2. As authorized by Seattle Municipal Code 15.04.100.C and this ordinance, the  
2     SDOT shall not assess the Street Use permit use fees that would typically be assessed for the use  
3     of the 8<sup>th</sup> Avenue North right-of-way to accommodate construction activities related to private  
4     development for 300 8<sup>th</sup> Ave N and 333 8<sup>th</sup> Ave N on 8<sup>th</sup> Avenue North, between Thomas and  
5     Harrison Streets, except as set forth in Attachment A.

1  
2 Section 3. This ordinance shall take effect and be in force 30 days after its approval by  
3 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
4 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

5 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2015, and  
6 signed by me in open session in authentication of its passage this  
7 \_\_\_\_ day of \_\_\_\_\_, 2015.

8  
9 \_\_\_\_\_  
10 President \_\_\_\_\_ of the City Council  
11

12 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2015.  
13

14 \_\_\_\_\_  
15 Edward B. Murray, Mayor  
16

17 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2015.  
18

19 \_\_\_\_\_  
20 Monica Martinez Simmons, City Clerk  
21

22  
23 (Seal)

24 Attachment A: Memorandum of Agreement between the City of Seattle and City Investors VII,  
25 LLC

26 Exhibit 1 to Attachment A: 8<sup>th</sup> Avenue North Concept Plan

27 Exhibit 2 to Attachment A: Fee Calculations  
28

## **MEMORANDUM OF AGREEMENT**

**Between**

**The City of Seattle And City Investors VII, LLC**

**For 300 & 333 8<sup>th</sup> Ave North**

**Full Block Reconstruction Project**

**Reference SDOT Street Improvement Plan # 226851**

This Memorandum of Agreement ("Agreement") is made between The City of Seattle ("City"), Washington a municipal corporation acting through its Seattle Department of Transportation ("SDOT") and City Investors VII, LLC ("City Investors") a private for-profit corporation (collectively the "Parties.")

- 1. PURPOSE** The purpose of this Agreement is to execute an agreement between the Parties in order to achieve a full block reconstruction of 8<sup>th</sup> Avenue North between Thomas and Harrison Streets, in accordance with the South Lake Union Street Concept Plans ("Concept Plans") adopted by SDOT Director's Rule 05-2013 and to support SDOT's efforts to implement these plans through capital projects.
- 2. BACKGROUND** City Investors applied for Street Improvement Permit ("SIP") 226851 to install street improvements on the frontage of their development at 300 8<sup>th</sup> Avenue North as required by the Land Use Code, Title 23, and have plans to submit a SIP for development of 333 8<sup>th</sup> Avenue North on the opposite side of the block.

The Concept Plans solidified a community vision formalized in the SLU Urban Design Framework that encourages enhanced streetscape features to invigorate the pedestrian environment, increases the multimodal functionality of the right-of-way, and results in an environmentally sensitive street design by preserving trees and planting significant landscape. Since adopting the Concept Plans, SDOT prioritized and advanced the design of 8<sup>th</sup> Avenue North with an interest to secure implementation funding.

In collaboration with SDOT and consistent with the vision in the Concept Plans, City Investors proposed to install additional street improvements beyond their code requirements on 8<sup>th</sup> Avenue North (the "8<sup>th</sup> Avenue Project") that will help implement the Concept Plans in an expeditious and cost-effective way.

- 3. SCOPE OF WORK** In accordance with SIP 226851 and Exhibit 1 that is attached to and incorporated into this Agreement, the 8<sup>th</sup> Avenue Project public improvements in the entire right of way shall include: removing curbs to create a curb-less shared-use street; installing landscaping and preserving trees and installing new tree plantings; and installing seating, pedestrian-scaled lighting, tactile warning pavers, and vehicular curb ramp at Harrison and Thomas Street intersections. The area of roadway as shown in SIP 226851 and Exhibit 1 includes the pavement cross-section that is limited to the street paving surface and base layers.

4. **TERMS OF AGREEMENT** This Agreement shall begin when executed by the Parties but no sooner than the effective date of the authorizing ordinance, and shall end upon the work being completed as described below, unless amended by written agreement by the Parties.
5. **FEE AND PAYMENT** The 8<sup>th</sup> Avenue Project will consist of two construction projects at 300 and 333 8<sup>th</sup> Avenue North. As authorized by Seattle Municipal Code 15.04.100.C and the ordinance authorizing this Agreement, the SDOT shall not assess Street Use permit use fees that would typically be assessed for the use of the 8<sup>th</sup> Avenue North right-of-way to accommodate construction activities related to the private development for 300 8<sup>th</sup> Avenue North and 333 8<sup>th</sup> Avenue North between Thomas and Harrison Streets.

In consideration of this fee exception, City Investors shall provide the equivalent to the fees through a voluntary contribution to build the full block reconstruction of 8<sup>th</sup> Avenue North consistent with the adopted Concept Plans, and the additional street improvement elements listed on SIP 226851 and Exhibit 1.

The additional construction costs shall be no less than the use fee exemptions for 8<sup>th</sup> Avenue North as detailed in Exhibit 2. Construction costs and use fee exemptions that exceed the estimates in Exhibit 2 shall not be incurred by the City but instead shall be covered by City Investors. If the additional construction costs are less than the use fee exemptions for 8<sup>th</sup> Avenue North as detailed in Exhibit 2, City Investors shall pay the difference in construction costs and use fees to the City. Permit issuance fees and review and inspection charges shall still be assessed by SDOT for each project.

The City shall grant City Investors this exception to paying use fees for Street Use permits on 8<sup>th</sup> Avenue North for the 16-month-construction duration for each project as identified in Exhibit 2 Fee Calculations. SDOT agrees to not assess use fees for both projects, no matter when they are constructed, provided the construction does not exceed the timelines in the Scope of Work. If the construction timeline exceeds this duration, City Investors shall be (i) responsible for informing SDOT of the schedule change, (ii) the new estimated completion date, and (iii) any additional construction costs and use fees associated with the additional construction timeline.

6. **BONDING AND INSURANCE** City Investors shall obtain the required surety bonding and liability insurance for constructing the improvements identified in the SIPs and in this Agreement consistent with the requirements in SDOT's Street Improvement Permitting process and SDOT Client Assistance Memos 2102 and 2200. The value of the bond and insurance is based on the street improvement construction cost for all elements described in SIP 226851 and Exhibit 1, and the expense the City may incur as a result of unfinished work or the potential damage to utilities.
7. **SCHEDULE AND PERFORMANCE** City Investors shall perform all work necessary to construct the Scope of Work identified in SIP 226851 and Exhibit 1. The scope of the work area shall not be exceeded for any reason unless there is written agreement by the Parties in

advance of additional work being performed. The Scope of Work shall be complete, that is installed, inspected, and approved no later than April 2018. The Parties shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to agree on an amended schedule, if necessary, to be effective upon the execution of a written amendment to this Agreement

8. **NO THIRD PARTY BENEFICIARIES** This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit the Party's agents, assigns, consultants, or contractors; and no other person or entity shall be a party beneficiary of this Agreement.
9. **INDEMNIFICATION** City Investors releases and shall defend, indemnify, and hold harmless; the City and its employees and agents from all losses, liabilities, claims including claims arising under federal, state, or local environmental laws, costs including attorneys' fees, actions, or damages of any sort whatsoever; arising out of the City Investors' performance of the work and services contemplated by this Agreement to the extent attributable to the negligent actor or omissions, willful misconduct, or breach of this Agreement by City Investors, its servants, agents, and employees. In furtherance of these obligations and only with respect to the City, its employees and agents, City Investors waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance worker's compensation, disability, employee benefit, or similar laws. City Investors acknowledges that this waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this Agreement shall survive any termination or expiration of this Agreement.
10. **ASSIGNMENT** This Agreement shall not be assigned in whole or in part by any party without the prior written approval of the other Parties.
11. **COMPLIANCE WITH LAW** The Parties shall comply with all federal, state, and local laws and ordinances. City Investors shall use its best efforts to cause its contractors to follow the requirements of a City of Seattle Public Works contract that includes providing prevailing wage to its employees and its assigns for the construction and administration of this project as shown in SIP 226851 and Exhibit 1.
12. **AMENDMENT** This Agreement shall not be amended or modified except in writing and signed by the Parties.
13. **SEVERABILITY** If any provision of this Agreement or any provision of any law, rule, or document incorporated by reference into this Agreement shall be held invalid, the invalidity shall not affect the other provisions of this Agreement that legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are severable.

**14. ENTIRE AGREEMENT** This Agreement and any written attachments or Amendments constitute the complete Agreement of the Parties and any oral representations or understandings not incorporated by writing into this Agreement are excluded.

**15. NOTICES AND DELIVERABLE MATERIALS** All requests or other communications required under this Agreement shall be in writing and delivered by at least one of the following methods: in person; or transmitted by electronic mail (email) addressed as provided for below:

**Vulcan, Inc.**  
Ada Healey  
City Investors VII, LLC  
505 Fifth Ave South, Suite 900  
Seattle, WA 98104  
(206) 342-2149  
adah@vulcan.com

**SDOT Street Use & Urban Forestry**  
Greg Izzo, Interim Director  
SDOT Street Use & Urban Forestry  
Division  
700 Fifth Avenue, Suite 2300  
Seattle, WA 98104  
(206) 684-4996  
gregory.izzo@seattle.gov

**16. SIGNATURES**

In consideration of the Agreement's terms, the Parties execute this Agreement by the below representative's signatures.

**CITY INVESTORS VII, LLC**

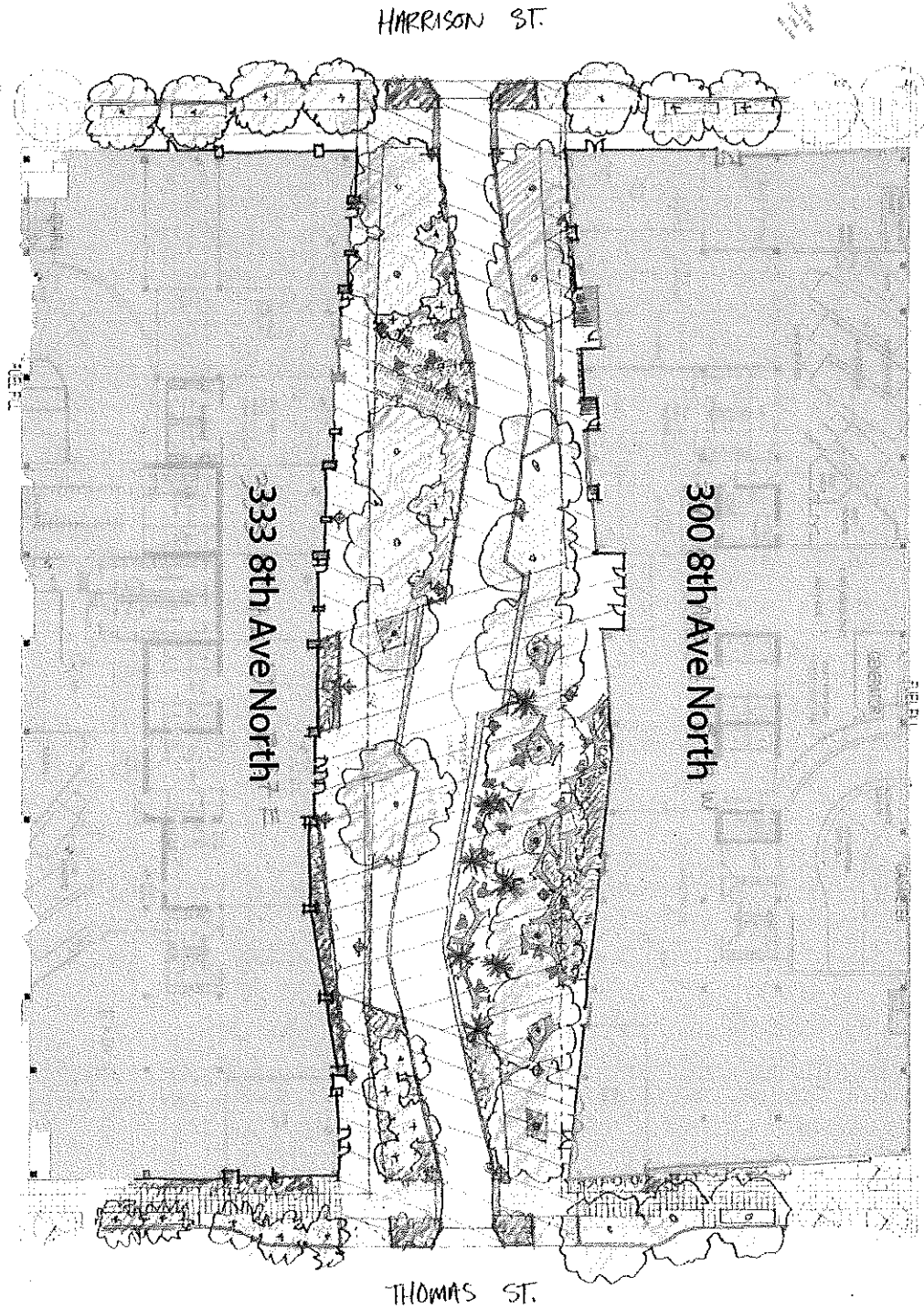
By \_\_\_\_\_  
Ada Healey Date  
Vice-President, Real Estate

**CITY OF SEATTLE**

By \_\_\_\_\_  
Scott Kubly Date  
DIRECTOR, Seattle Department of Transportation

ATTACHED EXHIBIT 1: 8th Avenue North Concept Plan  
ATTACHED EXHIBIT 2: Fee Calculations

**EXHIBIT 1: 8<sup>th</sup> Avenue North Concept Plan**





## Costs for Basic 8th Ave Street Improvements - East of 8th

Attachment A to City Investors VII LLC 8th Ave N MOA ORD

Design Decision #: 0  
Date: 08/25/14

Attachment A to City Investors VII LLC 8th Ave N MOA ORD

<b>Vulcan Block 52W Estimated Street Use Fees</b>		
<b>Street</b>	<b>Sq. Ft. Use Area</b>	<b>Total Permit Fees For 16 month period</b>
Harrison	720	\$ 17,064
Thomas	720	\$ 432
Alley	2160	\$ 1,296
8th Ave. N	6480	\$ 176,904
<b>Total \$ 241,056</b>		

<b>Vulcan Block 57E Estimated Street Use Fees</b>		
<b>Street</b>	<b>Sq. Ft. Use Area</b>	<b>Total Permit Fees For 16 month period</b>
Harrison	720	\$ 17,064
Thomas	720	\$ 432
Alley	2160	\$ 1,296
8th Ave. N.	6480	\$ 176,904
<b>Total \$ 241,056</b>		

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Department of Transportation	Susan McLaughlin/3-9649	Doug Palmer/4-5266

**Legislation Title:** AN ORDINANCE authorizing the Director of the Seattle Department of Transportation to execute an agreement between The City of Seattle and City Investors VII, LLC for a full block reconstruction of 8<sup>th</sup> Avenue North, between Thomas and Harrison Streets.

**Summary of the Legislation:** The purpose of this legislation is to authorize and execute an expanded construction agreement between The City of Seattle ("City") and City Investors VII, LLC ("City Investors") in order to achieve a full block reconstruction on 8<sup>th</sup> Avenue North, between Thomas and Harrison Streets, in accordance with the adopted South Lake Union ("SLU") Street Concept Plans ("Concept Plans") and to support SDOT's active efforts to have these concepts implemented through capital projects.

**Background:**

City Investors applied for a Street Improvement Permit 226851 to install street improvements on the frontage of their development at 300 8<sup>th</sup> Avenue North as required by the Land Use Code. They also own and plan to redevelopment the opposite side of the street at 333 8<sup>th</sup> Avenue North. 8<sup>th</sup> Avenue North was identified in the SLU Street Concept Plans as a candidate for a shared use street because of its low volume, low speed traffic and the potential increase in density with a need for quality open space.

The Concept Plans solidified a community vision formalized in the SLU Urban Design Framework that encourages enhanced streetscape features to invigorate the pedestrian environment, increase the multimodal functionality of the right-of-way, resulting in an environmentally sensitive street design by preserving trees and planting significant landscape.

Since adoption of the Concept Plans by Director's Rule 05-2013, SDOT has prioritized and advanced the design and preliminary cost estimates for 8<sup>th</sup> Avenue North with an interest to secure funding for implementation. In collaboration with SDOT and consistent with the vision in the Concept Plans, City Investors proposed to reconstruct and install additional street improvements beyond the code requirements on 8<sup>th</sup> Avenue North that will help realize the Concept Plans in an expeditious and cost-effective way.

☐ This legislation does not have any financial implications.

☒ This legislation has financial implications.

## **Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
Consistent with Seattle Municipal Code 15.04.100.C and as authorized by Council-approved ordinance, the SDOT may grant an exception from assessing the Street Use permit use fees that would typically be assessed for the use of the right-of-way when the use is for a public transportation-related-infrastructure project. The estimated cost of the street usage fee to construct these two projects is **\$527,912.**

In consideration of this use fee exception, City Investors will provide the equivalent \$527,912 fee by a voluntary contribution to build a City-prioritized transportation improvement, the full block reconstruction of 8<sup>th</sup> Avenue North consistent with the adopted Concept Plans. The cost estimate for the full block reconstruction is **\$2.1 million.**

Standard Street Improvement Permit improvements required for these two projects would cost approximately \$245,544 for 300 8<sup>th</sup> Ave N and \$227,751 for 333 8<sup>th</sup> Ave N, **for a total cost of \$473,295.**

A standard development like 300 and 333 8<sup>th</sup> Avenue North, would not be required to complete this extent of reconstruction in accordance with the adopted Concept Plans. This approach enables SDOT to realize a full block reconstruction for a quarter of the cost. Partnering with private development to achieve this SDOT priority transportation improvement offers efficiency and expediency.

- b) **What is the financial cost of not implementing the legislation?**  
SDOT completed preliminary cost estimates for a green street treatment that would largely be consistent with the Concept Plans for 8<sup>th</sup> Avenue North last year but did not include a curb-less street design. The costs were based on implementing a pedestrian-oriented street from Mercer to John with an enhanced green street environment, including widened sidewalks, installing street trees, plantings, and pedestrian lighting. These improvements were estimated to **cost \$500,000 per block without the full block reconstruction** to create the curb-less street. It only included surface treatment to existing pavement at intersection and spot pavement replacement.
- c) **Does this legislation affect any departments besides the originating department?**  
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**  
There are no comparable alternatives that would deliver the same level of quality and consistency with the street concept plan.
- e) **Is a public hearing required for this legislation?**  
No.

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**g) Does this legislation affect a piece of property?**

Yes, 300 and 333 8<sup>th</sup> Avenue North.

**h) Other Issues:**

None.

**List attachments to the fiscal note below:**

None.

Please refer to Exhibit 1: 8<sup>th</sup> Avenue North Concept Plan; and Exhibit 2: Fee Calculations, as part of Attachment A to Ordinance.



**City of Seattle**  
Edward B. Murray  
Mayor

December 23, 2014

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

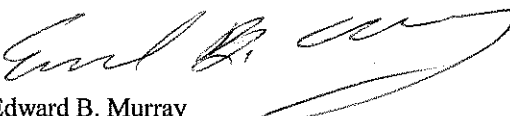
I am pleased to transmit the attached proposed Council Bill that authorizes a Memorandum of Agreement between the City of Seattle and City Investors VII, LLC. The agreement enables the entire 300 block of 8<sup>th</sup> Avenue North to be reconstructed in accordance with the vision in the South Lake Union Street Concept Plans.

The Concept Plans package was adopted by Director's Rule in November 2013. 8<sup>th</sup> Avenue was designed as a residential "spine" of the South Lake Union neighborhood. The vision offered a respite from the increasingly dense development on the surrounding streets, creating "central street rooms" where pedestrians share the street with bicycles and a low volume of vehicles. The provisions in the Concept Plans are voluntary. The design proposed by City Investors exemplifies this street concept and offers a high quality public space to residents, visitors, and workers. This project highlights the challenge to implement the Concept Plans without mandating or incentivizing private development. The full block reconstruction far exceeds the monetary value of the Street Improvement Permits required of the development.

SDOT and City Investors developed a partnership agreement, as documented in the Council Bill, to realize the full vision of the 8<sup>th</sup> Avenue design. This partnership is supported by existing legislation to incentivize public private partnerships that deliver transportation projects. This partnership will deliver an SDOT priority project for a quarter of the cost.

Thank you for your consideration of this legislation. Should you have questions please contact Susan McLaughlin at (206) 733-9649.

Sincerely,



Edward B. Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Office of the Mayor  
Seattle City Hall, 7<sup>th</sup> Floor  
600 Fourth Avenue  
PO Box 94749  
Seattle, Washington 98124-4749

Tel (206) 684-4000  
Fax: (206) 684-5360  
Hearing Impaired use the Washington Relay Service (7-1-1)  
[www.seattle.gov/mayor](http://www.seattle.gov/mayor)